THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO. 17924 OF 1997

Dated:29-12-2006

Between:

N.Umapathy Reddy Petitioner

And

State of A.P. rep. by District Collector, Chittoor District and another.

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO. 17924 OF 1997

ORDER:

1. This writ petition has been instituted by a devotee of the temple questioning the action of the respondent-State in seeking to acquire compulsorily land of an extent of Ac.1.50 cents situated in Survey No.126/1 of Velkur village of Gangadhara Nellore Mandal, Chittoor District belonging to Sri Thirumaleswara Swamy Temple, for the purpose of providing house sites to the poor Scheduled Caste persons.

2. Various contentions have been canvassed by the writ petitioner. He raises an objection that any attempt to acquire the land belonging to the temple, which is one of the ancient temples in the locality, would adversely affect the services to be performed in the temple. He also raises a contention that the acquisition itself is not for bonafide purpose. He asserts that sizable number of villagers have raised their objections for this compulsory acquisition.

3. A counter affidavit has been filed in the matter. The counter affidavit has disclosed that the proposals for the compulsory acquisition of the land has been approved by the District Collector, Chittoor on 08-03-1997 and on the same date he has also approved the declaration to be published under Section 6 of the Land Acquisition Act (for short 'the Act'). Thus the counter affidavit asserts that the draft notification under Section 4 (1) of the Act and the declaration under Section 6 of the Act have been approved and published on the same date. The question as to the correctness and procedural propriety of such an action on the part of the State has fallen for consideration before a Division Bench of this court in the case of **Katari Satyanarayana**

and others Vs. District Collector, Krishna,[1] and it had been answered as follows:

" The next objection to the acquisition proceedings is that as the declaration under Section 6 of the Act has been published simultaneously with the draft notification under Section 4 (1) of the Act, the acquisition proceedings would become illegal.

Sub-section (4) of S.17 of the Act as it stood before amendment, insofar as it is relevant for our purpose was in the following terms:-

".....the appropriate Government may direct that the provisions of Section 5-A shall not apply and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, sub-section (1)."

Interpreting that section, the Supreme Court in Somawanti Vs. State of Punjab, AIR 1963 S.C.151, held thus:

" The law does not make the prior publication of notification under sub-section (1) of Section 4 a condition precedent to the publication of a notification under sub-section (1) of Section 6 ."

The Supreme Court observed:

"Where acquisition is being made after following the normal procedure the notification under the latter section (Sec.6(1)) will necessarily have to be published subsequent to the notification under the former section (Sec.4(1)), because in such a case the observance of procedure under S.5-A is interposed between the two notifications. But where S.5-A is not in the way there is no irregularity in publishing those notifications on the same day."

The position insofar as our State is concerned, changed after enactment of the Land Acquisition (Andhra Pradesh Amendment and Validation) Act,9 of 1983. After the said amendment, sub-section (4) of S.17 was in the following terms:-

".....the appropriate Government may direct that the provisions of S.5-A shall not apply, and, if it does so direct, a declaration may be made under S.6 in respect of the land at any time after causing public notice under S.4, sub-section (1)."

From a perusal of sub-section (4) of S.17 of the Act as amended by the Land Acquisition (A.P.Amendment and Validation)Act, 9 of 1983 (for short "the State Amending Act"), it is clear that the declaration under sub-section (2) of S.6 could have made only after causing public notice under S.4, sub-section (1). Therefore, having regard to the provisions of sub-section (4) of S.17 of the Act as amended by the State Anmending Act, a declaration made under S.6(1) of the Act could have been published in Official Gazettte under S.6(2) of the Act only after public notice under S.4(1). A declaration published simultaneously which would naturally be before causing the public notice would, be in violation of the provisions of sub-section (4) of S.17 and therefore illegal. This was the view taken by a learned single judge of this Court in Smt.Komala Devi V. State of A.P. (1984) 1 APLJ 80.

However, after the aforementioned State amendment the Parliament also amended the Land Acquistion Act by the Land Acquisition (Amendement) Act (Act 68 of 1984) (for short " the Central amending Act"). After the said amendment sub-section (4) of S.17 reads as follows:-

".....the appropriate Government may direct that the provisions of S.5-A shall not apply, and, if it does so direct, a declaration may be made under S.6 in respect of the land at any time after the date of publication of the notification under Sec.5, sub-section (1).

To understand the import of the phrase " after the date of publication of the notification", it would be useful to refer to S.4(1) of the Act as it stands after amendment.

"4. Publication of preliminary notification and powers of officers thereupon.

(1) Whenever it appears to the appropriate Government or the District Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, or the District Gazette and in two daily newspapers circulating in that locality of which at least one whall shall be in the regional language and the Collector shall within forty days from the date of publication of such notification cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification."

A reading of these two sub-sections makes it clear that ' the date of publication ' would be the last of the dates of publication of S.4(1) notification in the Gazette, publication of the said notification in two daily newspapers circulating in the locality and the date of publication of substance of such notification in the locality. Obviously last of the dates of the publication of the notification above referred to can only be after publication of the draft notification in the Gazette. Therefore, declaration under S.6(1) can validly be published only after the date of publication of the notification referred to in sub-section (1) of S.4. As such, simultaneous publication of declaration under S.6(2) and draft notification under S.4(1) would be in violation of sub-section (1) and would, therefore, render the publication of the declaration under S.6(2) invalid and illegal. We are supported in our view by a recent judgment of the Supreme Court in State of U.P. Vs. Radhey Shyam Nigam, AIR 1989 SC 682. In that case for purposes of different housing schemes, notifications were issued for acquiring lands. The draft notification under S.4(1) and the declaration under S.6 in question were published simultaneously on 6th May,1985. A Division Bench of the High Court of Allahabad before which the validity of the acquisition proceedings was challenged, upheld the objection that simultaneous publication of declaration under Sec. 6 with the draft notification under S.4(1) was illegal, and quashed the declaration under S.6 of the Act. On appeal to the Supreme Court, the judgment of the High Court was confirmed and it was observed:

" The words have to be understood in their usual and most known signification. If that be so, then the legislature must have had some intention in choosing the expression 'after' before 'date of publication of the notification' in sub-section (4) of S.17 of the Act while making amendment by Amending Act No.68 of 1984. It is true that there were some changes giving the meaning of the date of the publication in S.4(1) and (2) as well as S.6(2) of the Act. But for that, there was no need for the use of the expression 'after the date'. If that be the position, then we must accept the interpretation put upon the amended clause by the High Court in the judgment under appeal."

From the above discussion it follows that the declaration under S.6 of the Act published in the Gazette on 9.11.1983, is illegal and invalid and it is accordingly quashed."

4. Bound as I am, by the authoritative pronouncement, I consider it appropriate to quash the impugned declaration under Section 6 of the Act.

5. The writ petition is allowed but however without costs.

NOOTY RAMAMOHANA RAO,J

29-12-2006
Stp

---

[1] AIR 1990 A.P. page 326